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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND DIVISION

17 ELASTICSEARCH, INC., a Delaware
18 corporation, ELASTICSEARCH B.V., a Dutch
corporation,

19 Plaintiffs,

20 v.

21 FLORAGUNN GmbH, a German corporation,

22 Defendant.
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Case No. 4:19-cv-05553-YGR (AGT)

**DECLARATION OF MICHAEL S.
KWUN PURSUANT TO LOCAL
CIVIL RULE 79-5(e)(1) IN
PARTIAL SUPPORT OF
GRANTING PLAINTIFFS'
ADMINISTRATIVE MOTION TO
FILE UNDER SEAL (DKT. NO.
188)**

I, Michael S. Kwun, declare:

1. I am a partner at Kwun Bhansali Lazarus LLP, and counsel of record for defendant floragunn GmbH (“floragunn”). I make this declaration pursuant to Civil Local Rule 79-5(e) in partial support of redacting or sealing documents filed under seal pursuant to Plaintiffs’ September 21, 2021 Administrative Motion to File Under Seal (Dkt. No. 188) (the “Sealing Motion”), which seeks to seal material relating to Plaintiffs’ Opposition to floragunn’s Motion to Exclude Portions of Testimony of Plaintiffs’ Expert Martin Walker (Dkt. No. 190) (“Walker Opposition”). I make this declaration based on my own personal knowledge. If called as a witness, I could and would testify competently to the matters set forth herein.

2. Pursuant to this Court’s Standing Order in Civil Cases, floragunn joins the Sealing Motion in part.

3. Attached hereto as Exhibit A is a declaration of Jochen Kressin (the “Kressin Declaration”). Mr. Kressin is a founder, managing director, and co-CEO of floragunn. Based on the Kressin Declaration and my review of the proposed redacted portions of the Walker Opposition as well as the related exhibits, good cause exists to grant the Sealing Motion as follows:

| <i>Document or Portion of Document</i> | <i>floragunn’s Position and Reasoning on Sealing</i> |
|---|---|
| Walker Opposition at page 2, lines 12-13 | floragunn does not join this request. This material does not need to be sealed. |
| Walker Opposition at page 3, lines 12-13 | floragunn does not join this request. This material does not need to be sealed. |
| Walker Opposition at page 3, lines 27-28 | floragunn joins this request. Good cause exists to seal this material because it discloses personal and private information about a former floragunn employee. Rothstein Decl. ¶ 4; Kressin Decl. ¶ 3. |
| Walker Opposition at page 4, lines 3-4, 6, 11-13, and 17-18 | floragunn joins this request. Good cause exists to seal this material because it discloses personal and private information about a former floragunn employee. Rothstein Decl. ¶ 4; Kressin Decl. ¶ 3. |

| <i>Document or Portion of Document</i> | <i>floragunn's Position and Reasoning on Sealing</i> |
|--|---|
| Walker Opposition at page 8, lines 18-20 | floragunn does not join this request. This material does not need to be sealed. |
| Walker Opposition at page 9, lines 8-10 | floragunn does not join this request. This material does not need to be sealed. |
| Walker Opposition at page 13, lines 7-10 | floragunn joins this request. Good cause exists to seal this material because it discloses personal and private information about a former floragunn employee. Rothstein Decl. ¶ 4; Kressin Decl. ¶ 3. |
| Walker Opposition at page 17, lines 24-27 | floragunn notes that Plaintiffs seek to seal this material; Rothstein Decl. ¶ 3; Kearns Decl. ¶¶ 3-4. floragunn takes no position on whether good cause exists to seal this material. |
| Walker Opposition at page 18, lines 5-6 and 8-9 | floragunn does not join this request. This material does not need to be sealed. |
| Exhibit B to Eberhart Declaration (Excerpts of the rebuttal Report of Defendant floragunn GmbH's expert witness Dr. Owen Astrachan in this matter, dated July 9, 2021) | floragunn does not join this request. This material does not need to be sealed. |
| Exhibit G to Eberhart Declaration (Excerpts of the Expert Report of Elastic's expert witness Dr. Martin Walker in this matter, dated June 11, 2021) ¶ 33 | floragunn notes that third party AWS has requested sealing of this material. Rothstein Decl. ¶ 4; Gratz Decl. ¶ 4; Meadows Decl. floragunn does not independently seek to seal this material. |
| Exhibit G to Eberhart Declaration (Excerpts of the Expert Report of Elastic's expert witness Dr. Martin Walker in this matter, dated June 11, 2021) at ¶¶ 57, 58, 75, 88, 104, 119, 139, 154, 188, 226, 250, and 266 | floragunn notes that Plaintiffs seek to seal this material; Rothstein Decl. ¶ 3; Kearns Decl. ¶¶ 3-4. floragunn takes no position on whether good cause exists to seal this material. |
| Exhibit H to Eberhart Declaration (Exhibit 161 to the March 1, 2021 deposition of Jochen Kressin in this matter) in its entirety | floragunn joins this request in part. Good cause exists to redact Hendrik Saly's address, city, and signature from this document (on the first and last pages) because those items reveal personal and private information about a former floragunn employee. Rothstein Decl. ¶ 4; Kressin Decl. ¶ 3. The document does not otherwise need to be sealed. |

| <i>Document or Portion of Document</i> | <i>floragunn's Position and Reasoning on Sealing</i> |
|---|---|
| Exhibit L to Eberhart Declaration (February 9, 2021 email from V. David Rivkin, counsel for Defendant floragunn GmbH in this matter to David Eberhart, counsel for Elastic in this matter) as to the highlighted portion at the start of the second paragraph on the first page | floragunn notes that Plaintiffs seek to seal this material; Rothstein Decl. ¶ 3; Kearns Decl. ¶ 5. floragunn takes no position on whether good cause exists to seal this material. |
| Exhibit L to Eberhart Declaration (February 9, 2021 email from V. David Rivkin, counsel for Defendant floragunn GmbH in this matter to David Eberhart, counsel for Elastic in this matter) as to the highlighted portions of the third paragraph on the first page | floragunn joins this request. Good cause exists to seal this material because it discloses personal and private information about a former floragunn employee. Rothstein Decl. ¶ 4; Kressin Decl. ¶ 3. |
| Exhibit Q to Eberhart Declaration (Exhibit 326 from the April 27, 2021 Rule 30(b)(6) deposition of Jochen Kressin in this matter) in its entirety | floragunn joins this request. Good cause exists to seal this material because it discloses highly confidential, proprietary, and sensitive competitive business information, the disclosure of which could harm floragunn and benefit its competitors. Rothstein Decl. ¶ 4; Kressin Decl. ¶ 4. |

4. floragunn's proposed redactions are narrowly tailored and limited to portions of the documents containing floragunn's confidential business strategy information, or personal and private information of a former floragunn employee.

5. Pursuant to the Court's Standing Order in Civil Cases, floragunn will submit to the Court unredacted copies of the Walker Opposition and its accompanying exhibits with highlighting to indicate floragunn's proposed narrowed sealing requests. floragunn will also submit a proposed order reflecting these narrowed requests.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge. Executed on September 27, 2021 at San Francisco.

/s/ Michael S. Kwun

Michael S. Kwun